

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

Gibson  
R.M.I.  
30521

FILE: 8-216119

DATE: February 26, 1985

MATTER OF: Steve Stone - Subsistence Expenses for  
Excess Traveltime - Charging of Annual  
Leave

## DIGEST:

1. A handicapped employee claims reimbursement for additional subsistence expenses he incurred when he arrived at his temporary duty site several days early, and then delayed returning to his official duty station, in order to avoid driving in inclement weather. We hold that the employee may be reimbursed for the additional subsistence expenses because he acted prudently in incurring those expenses. Furthermore, reimbursement is justified as a "reasonable accommodation" to the employee under the Rehabilitation Act of 1973.
2. A handicapped employee arrived early at his temporary duty site in order to avoid driving in inclement weather. Whether or not the employee should be charged annual leave in connection with his early arrival is primarily a matter of administrative discretion. However, under the circumstances of this case, we would not object to an administrative determination to excuse the employee for the time in question, without a charge to his annual leave account.

Mr. James D. Clark, an authorized certifying officer with the National Park Service, Rocky Mountain Regional Office, requests an advance decision concerning the claim of Mr. Steve Stone. The principal issue for our determination is whether Mr. Stone, a handicapped employee, may be reimbursed for the additional subsistence expenses he incurred when he arrived early at his temporary duty site and then delayed his return travel in order to avoid driving in

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inclement weather. We hold that Mr. Stone may be reimbursed for the additional subsistence expenses because he acted prudently in incurring those expenses, and reimbursement is supported by the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701, et seq., (1982).

#### BACKGROUND

Mr. Stone, an Outdoor Recreation Planner with the National Park Service in Denver, Colorado, was scheduled to perform temporary duty in San Francisco, California, during the months of March and April 1983. Pursuant to a General Travel Authorization, Mr. Stone completed and obtained approval of an itinerary for travel beginning March 24 and ending April 18, 1983.

Mr. Stone has severe physical disabilities as the result of an automobile accident, and is medically classified as a quadriplegic. Because of his handicap, the agency authorized Mr. Stone to use his own specially equipped automobile for the temporary duty travel.

On Monday, March 21, 1983, Mr. Stone advised his supervisor that he intended to begin driving to San Francisco that day, 3 days before his scheduled departure date, because a severe snowstorm was predicted for the days on which he had planned to travel. His supervisor verbally approved the early departure, and Mr. Stone left Denver at 10 p.m. on Monday, March 21. He arrived in Concord, California, on the evening of Wednesday, March 23, and lodged there in a private residence until the morning of Sunday, March 27. Mr. Stone claimed meal costs, but no lodging expenses, for the period of his stay in Concord.

Mr. Stone traveled from Concord to San Francisco on Sunday, March 27, and began his temporary duty assignment on the following Monday morning. He completed his assignment on the afternoon of Friday, April 8, but chose to delay his return travel to Denver because weather reports indicated poor driving conditions in the Rocky Mountains. Mr. Stone lodged in a private residence in San Francisco on Saturday, April 9 and Sunday, April 10, claiming meal expenses but no lodging costs for the weekend. He used annual leave on

Monday, April 11 and Tuesday, April 12, and then performed return travel to Denver between Wednesday, April 13 and Friday, April 15, 1983.

The agency allowed Mr. Stone's claim for subsistence expenses during the 2-week period of his temporary duty assignment, and for the days he spent traveling during the periods March 21 to March 23 and April 13 to April 15, 1983. However, the agency denied Mr. Stone reimbursement for the meal expenses he incurred between Thursday, March 24 and Saturday, March 26, the days following his early arrival in Concord, and for Saturday, April 9 and Sunday, April 10, the weekend after he had completed his temporary duty assignment.<sup>1/</sup>

Mr. Stone reclaimed the disallowed meal expenses, arguing that poor weather conditions forced him to travel from Denver to San Francisco earlier than he had planned, and then to delay his return travel to Denver. He explains that, as a physically handicapped individual, he would be exposed to extraordinary problems if he were required to drive in adverse weather conditions. Further, Mr. Stone refers to the Rehabilitation Act of 1973 and its implementing regulations, which, as discussed below, require Federal agencies to make reasonable accommodations to the physical limitations of qualified handicapped employees, unless such accommodations would impose an undue hardship on the agencies' programs. Finally, Mr. Stone has furnished his supervisor's statement that he could not have postponed his trip to San Francisco pending the improvement of weather conditions.

Against this background, the agency questions whether Mr. Stone may be reimbursed for the additional subsistence expenses associated with his early arrival in, and late departure from, California. In support of reimbursement,

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<sup>1/</sup> Apparently, Mr. Stone did not claim subsistence expenses for April 11 and 12, 1983, since he was in an annual leave status on those days.

the agency cites para. 2-2.3d(2) of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), incorp. by ref., 41 C.F.R. § 101-7.003 (1983), which allows additional per diem for delays during relocation travel where the delays are caused by an employee's physical handicap, an act of God, or other circumstances beyond the traveler's control. Also, the agency cites several of our decisions allowing additional per diem where employees interrupt temporary duty travel because of inclement weather. See, for example, 52 Comp. Gen. 135 (1972); and 41 Comp. Gen. 605 (1962). However, the agency notes that FTR para. 2-2.3d(2) and the cited decisions governing temporary duty travel concern delays en route, rather than the "early arrival" and "late departure" involved in Mr. Stone's case.

The agency also cites the provisions of the Rehabilitation Act of 1973 and its implementing regulations which, as noted previously, require agencies to accommodate the limitations of qualified handicapped employees to the extent that such accommodations do not impose an undue hardship on the agencies' programs. The National Park Service states that Mr. Stone qualifies as a handicapped employee within the meaning of the Rehabilitation Act, and that the expenditure involved in this case would not impose an undue hardship on its program.

Additionally, the agency questions whether it must charge Mr. Stone annual leave for Thursday, March 24, 1983, the day after he arrived in Concord, since he was neither traveling nor in a duty status on that day.<sup>2/</sup>

#### DISCUSSION

The general rules governing reimbursement for travel and subsistence expenses are found in Chapter 1 of the FTR. Under FTR para. 1-1.3a, an employee traveling on official

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<sup>2/</sup> The agency states that it does not question Mr. Stone's leave status on Friday, March 25, because he worked a compressed work schedule and Friday was his regular day off.

business is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business. The provisions of FTR para. 1-1.3b further state that reimbursable travel expenses are confined to those essential to the transaction of official business. The determination as to whether an employee has used due care in incurring a travel expense, and whether the expense is officially necessary, depends upon the facts and circumstances involved in each case. See Walter Wait, B-208727, January 20, 1983; and 33 Comp. Gen. 221 (1953).

In this case, Mr. Stone chose to begin his travel to San Francisco 3 days before his scheduled departure date because a snowstorm had been predicted for the scheduled days of travel. After completing his temporary duty assignment in San Francisco, he remained there for several days pending the abatement of a snowstorm in the Rocky Mountains. In view of Mr. Stone's physical limitations and the extraordinary problems he could encounter by traveling in inclement weather, we believe he exercised good judgement and prudence in departing early for his temporary assignment in San Francisco, and in delaying his return trip to Denver.

Furthermore, as both the agency and Mr. Stone point out, regulations implementing the Rehabilitation Act of 1973 require agencies to make reasonable accommodations to known physical limitations of qualified handicapped employees, unless such accommodations would impose an undue hardship on the agencies' programs. 29 C.F.R. § 1613.704 (1984). Our decisions reflect this commitment to assist handicapped employees. See the discussion in B-211812, March 26, 1984, 63 Comp. Gen. \_\_\_\_\_. Thus, in Norma Depoyan, B-215616, October 30, 1984, we held that a handicapped employee could be reimbursed for the cost of shipping her specially equipped automobile pursuant to a permanent change of station, because the expenditure represented a "reasonable accommodation" under the Rehabilitation Act of 1973 and did not impose an undue hardship on the agency's travel program.

Here, it appears that payment of the additional subsistence expenses incurred by Mr. Stone would represent a "reasonable accommodation" under the Rehabilitation Act of 1973. The agency has determined that Mr. Stone qualifies as

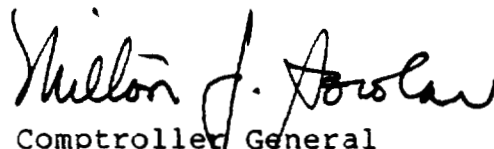
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a handicapped individual within the meaning of the Act, and that the character and amount of the expenditure would not impose an undue hardship on the operation of its travel program.

Accordingly, we conclude that Mr. Stone acted prudently in incurring additional subsistence expenses, and that payment of the expenses is further supported by the Rehabilitation Act of 1973 and its implementing regulations. Therefore, Mr. Stone may be paid the meal expenses he has claimed for the period Friday, March 25 through Saturday, March 26, 1983, and for the weekend of April 9 and 10, 1983.

Finally, the agency questions whether Mr. Stone should be charged annual leave for Thursday, March 24, 1983, since he was neither traveling nor in a duty status that day. We have held that the charging of annual leave is primarily a matter of administrative discretion. Laxman S. Sundae, B-185652, December 28, 1976. However, under the circumstances of this case, we would not object to an administrative determination to excuse Mr. Stone on Thursday, March 24, without a charge to his annual leave account. Thus, he would also be entitled to his meal expenses as claimed for that date.

For the reasons stated above, we hold that Mr. Stone's claim for additional subsistence expenses may be allowed.

  
Acting Comptroller General  
of the United States